



POLICE DEPARTMENT CITY OF NEW YORK

April 4, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Tanisha Gunn-Welsh
Tax Registry No. 938629
50 Precinct
Disciplinary Case No. 2015-14337

Charges and Specifications:

1. Said Police Officer Tanisha Gunn-Welsh, while assigned to the 28th Precinct, on or about May 14, 2014, while on-duty, was discourteous to on-duty New York City Police Department Sergeant Matthew Latimer.
Patrol Guide 203-09, Page 1, Paragraph 2 - Public Contact - General
General Regulations
2. Said Police Officer Tanisha Gunn-Welsh, while assigned to the 28th Precinct, on or about December 6, 2014, while on-duty, was discourteous to on-duty New York City Police Department Sergeant Craig Jones.
Patrol Guide 203-09, Page 1, Paragraph 2 - Public Contact - General
General Regulations
3. Said Police Officer Tanisha Gunn-Welsh, while assigned to the 28th Precinct, on or about March 18, 2015, while on-duty, was discourteous to on-duty New York City Police Department Sergeant Leron Lewis.
Patrol Guide 203-09, Page 1, Paragraph 2 - Public Contact - General
General Regulations

Appearances:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, NY 10038

Hearing Dates:

March 2 and 9, 2016

Decision:

Specification 1: Guilty

Specification 2: Guilty

Specification 3: Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 2 and 9, 2016. Respondent, through her counsel, entered a plea of not guilty to the subject charges. The Department called Police Officer Wayne Lowe, Sergeant Matthew Latimer, Police Officer John Mariduena, Sergeant Craig Jones, Police Officer Tonya Johnson, Sergeant Leron Lewis and Police Officer Paul Giangrasso as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of Specifications 1 and 2, but not guilty of Specification 3.

FINDINGS AND ANALYSIS

It is alleged that Respondent was discourteous to three separate sergeants on three separate dates. The incidents all occurred at the 28 Precinct in Manhattan, but were unrelated.

May 14, 2014

Sergeant Matthew Latimer testified that he was working the desk when Respondent and her partner, Officer Wayne Lowe, approached to request their meal break. The sergeant asked to see their monthly Quest reports: Lowe provided his report, and there was a brief, cordial discussion about what the officer "needed to do." (Tr. 34, 51) When Respondent provided her report, Sergeant Latimer informed her that she needed to focus on issuing hazardous moving summonses. Respondent answered that she had issued such summonses, for offenses such as double-parking, but the sergeant stated that wasn't the type of summons to which he was referring. (Tr. 34-36) Sergeant Latimer suggested 125th Street and Lenox Avenue as a place she might be able to issue hazardous moving summonses, but Respondent replied that that wasn't her sector. (Tr. 36) When the sergeant told her that regardless of her sector, she needed to write the moving summonses Respondent shrugged her shoulders and responded in a slightly elevated voice, "Or else what?", as if to say "Are you threatening me?" The sergeant was taken aback by her disrespectful tone, which he interpreted as an indication that she wasn't going to do what was asked. (Tr. 34, 38-39) Lowe nudged Respondent to let it go, and the two officers left together. The entire incident lasted about five minutes, and there were no civilians around. (Tr. 56) Sergeant Latimer denied that the officers had asked him to explain what he meant by a "hazardous" summons. (Tr. 48, 51)

Officer Paul Giangrasso testified that he was working at the telephone switchboard desk, about 15 feet away from the exchange between Sergeant Latimer and Respondent. On his way back from the bathroom, Giangrasso heard the sergeant speak to Respondent about the need to address traffic conditions, and suggested she go to the area

along 125th Street and 7th Avenue. Respondent replied that it wasn't her sector and wasn't her problem. Giangrasso stated that the sergeant was polite and not "overbearing" in speaking with Respondent. (Tr. 135) In contrast, Respondent's tone was rude, disrespectful, and noncompliant, not the tone he would use in speaking with a sergeant. (Tr. 132, 134) Giangrasso added that there was "a tone of sass" to Respondent's voice, reflecting a generally defiant attitude. (Tr. 151-152) Giangrasso testified that he didn't notice anything unusual about Respondent's facial expressions during the conversation, that she spoke at a normal conversational volume, and that she did not use profane language. (Tr. 132, 134, 149) Giangrasso acknowledged that when he walked to his desk the conversation already was underway, so he did not hear the start of it. (Tr. 133-134)

Respondent testified that she was "taken aback" by Sergeant Latimer's comments about the hazardous summonses, since she believed the double-parking summonses she and her partner had issued should have qualified as addressing a hazardous condition. (Tr. 158-159) When the sergeant insisted otherwise, Respondent asked him to explain what constituted a "hazardous summons." Lowe also asked the sergeant for clarification. (Tr. 159, 161) Rather than provide such clarification, the sergeant responded, "Psh -- you don't know what a hazardous summons is?" While Respondent waited for an answer, the sergeant stated, "Well, if you don't know what it is by now, I don't know what to tell you." (Tr. 161) Without further discussion, the two officers left for their meal break, with Lowe leaving first and Respondent following about 20 seconds later. (Tr. 162).

Officer Wayne Lowe testified that when the sergeant informed him that the double-parking summonses they had issued did not constitute a "hazardous summons," he and Respondent looked at each other in confusion. When Lowe again explained that

they had issued summonses for double-parking, Sergeant Latimer responded, "No, you know what I'm talking about." Respondent asked the sergeant to explain what he meant, "so when we get off meal, we can go out and get them." (Tr. 21-23) Lowe and Respondent repeatedly asked the sergeant for clarification, but received no specifics from him. (Tr. 26) Lowe then suggested to Respondent that they go on meal and continue the discussion with the sergeant later, and he went downstairs. According to Lowe, Respondent was not loud, aggressive or disrespectful to the sergeant in his presence. (Tr. 26-27, 29)

This tribunal finds that the credible evidence has proven that Respondent was discourteous toward Sergeant Latimer. On the one hand, Respondent testified credibly that she was unclear as to the sergeant's expectations, and was legitimately asking for clarification. Lowe provided corroboration on this point, explaining how he heard Respondent ask the sergeant for guidance so that when they went back out they could do what was expected. However, the manner in which Respondent spoke to her supervisor moved this situation beyond a mere misunderstanding and into the realm of discourtesy. The sergeant testified credibly that when he told Respondent that she needed to issue more hazardous moving summonses, she used a disrespectful tone in responding, "Or else what?" Giangrasso heard part of the conversation, and provided significant corroboration for the sergeant's account regarding the disrespectful, defiant manner in which Respondent spoke to the sergeant. The record has established, by a preponderance of the credible evidence, that Respondent was discourteous to Sergeant Latimer, and I find her guilty of Specification 1.

December 6, 2014

Sergeant Craig Jones testified that he went to get breakfast from the "Bus Stop," a popular restaurant outside the precinct. Upon arrival, he saw an officer from his command, Officer John Mariduena, sitting in an RMP outside the Bus Stop. The sergeant asked the officer why he was there, since he believed the officer was still holding an open job for which no final disposition had been called in. Also, the officer had not notified the desk that he would be leaving the confines of the precinct. Mariduena informed him that he and Respondent, his partner, had come there for breakfast. Sergeant Jones then went inside the restaurant and saw Respondent sitting at a table with another person. (Tr. 78-79)

When he arrived back at the precinct, the sergeant requested that the two officers report back to him, and then spoke with them inside the muster room. Sergeant Jones testified that when he asked the officers about failing to call in a final disposition and failing to notify the desk of their whereabouts, Respondent crossed her arms and said in a demeaning tone, "You do whatever you have to do," before walking out of the room and slamming the door. (Tr. 80-81) The sergeant spoke briefly with Mariduena, who remained in the room, and then the officer left and resumed patrol. The sergeant acknowledged that he raised his voice and his face felt flushed during his exchange with Respondent, which lasted 5-10 minutes. (Tr. 87)

Respondent testified that she and her partner had responded to the job in question and determined it was a false alarm. Several times she tried to contact the dispatcher with a final disposition, but received no response. (Tr. 166-167) Back at the precinct, she explained this to the sergeant, who then made a note of it in both officers' memo hooks.

According to Respondent, they spoke calmly with each other, and she denied waving off the sergeant or walking out on him. (Tr. 171) Indeed, there was no disagreement with the sergeant whatsoever. (Tr. 199-200)

Officer John Mariduená testified that back at the precinct, the sergeant spoke with the officers about being out at the Bus Stop without notifying the desk. The sergeant was loud and seemed upset. (Tr. 70) Respondent also seemed upset, and in an excited, loud voice replied that "everybody goes there." (Tr. 64-65) Mariduená could not recall anything else that was said during the discussion. (Tr. 73) He noted that Respondent generally talks with a loud voice. (Tr. 67) He also testified that the conversation lasted a couple of minutes, and then he and Respondent left the room together; Mariduená made no mention of Respondent's walking out first and slamming the door. (Tr. 66, 71) When asked whether Respondent stormed out of the office, Mariduená answered that he did not recall "the way she left the room." (Tr. 70)

This tribunal finds that the credible evidence has proven that Respondent was discourteous to Sergeant Jones. The sergeant was straight-forward and detailed in his account of Respondent's disrespectful behavior inside the muster room. In contrast, Mariduená was not very detailed, though even the few specifics he did provide corroborated that Respondent seemed upset and excited and spoke in a loud voice. Although Mariduená testified that he and his partner left together, and made no mention of Respondent walking out and slamming the door, that omission is likely a product of his general lack of recall regarding the incident. Respondent, meanwhile, described the interaction inside the muster room as completely cordial, with no disagreement between her and the sergeant. That description makes no sense in light of Sergeant Jones'

decision to press forward with disciplinary action against Respondent. There was no evidence of any negative history between the sergeant and Respondent that would suggest he had a motive to fabricate charges against her. (Tr. 172) I credit Sergeant Jones' account of Respondent's discourteous behavior inside the muster room, and find Respondent guilty of Specification 2.

March 18, 2015

Officer Tonya Johnson testified that she had a conversation with Respondent about a missing police accident report. Johnson was working in the Traffic Safety office, and claimed that Respondent had failed to return an original report she had borrowed to make a copy for a motorist, and also had failed to retain a copy of the motorist's driver's license. According to Johnson, Sergeant Leron Lewis was at his desk about four feet away from this discussion, and interjected himself into the conversation. At that point, Johnson left, and did not see or hear what transpired between the sergeant and Respondent. (Tr. 91-93)

Sergeant Leron Lewis testified that he overheard the conversation between Respondent and Johnson, and asked them what the disagreement was about. Johnson explained her concern about the missing report, and then walked away. (Tr. 98-101) The sergeant then asked Respondent why she had not retained the original report and given the motorist a copy. Respondent replied, in a voice that was slightly elevated though not combative, that they've "never done that here." (Tr. 101-102) Lewis showed her the binder containing the reports, which has a paper attached to the front instructing that the reports inside the binder are not to be given to anyone. (Dept. Ex. 1) They continued

their discussion until Respondent started calling out her delegate's name, insisting that the conversation was getting personal and she needed her delegate present. The sergeant described her demeanor as "somewhat combative." Lewis testified that Respondent then walked away from him, before they were done speaking. The sergeant told her, "Oh, okay. If you need your delegate, okay, fine," though he wasn't sure if she heard him. (Tr. 103-106) The entire incident lasted a little more than a minute.

Respondent, who was assigned to the telephone switchboard at the time of the incident, testified that she tried to explain to Lewis that she had not taken the original accident report. Instead of listening to her explanation, the sergeant repeatedly said to her, "Where is it? Where is it?" It seemed to Respondent like Lewis was "trying not to hear what I had to say to him." (Tr. 178-179) Feeling that they were at a standstill, Respondent told the sergeant that she wanted to get her delegate to mediate the situation. According to Respondent, the sergeant told her "Go ahead," and she left to go speak with her delegate, Officer McKay, who was back in the juvenile room. Respondent testified that she did not interrupt the sergeant during their conversation, and that the sergeant never told her not to walk away from him. (Tr. 179-181)

This tribunal is not persuaded that the credible evidence has established that Respondent was discourteous to Sergeant Lewis. Johnson left before the conversation between Respondent and Lewis, and there was no evidence to corroborate the sergeant's claim that Respondent rudely walked off in the middle of their discussion. Instead, this tribunal credits Respondent's plausible account that she tried to explain to the sergeant what had happened with the report, but the sergeant seemed unreceptive to what she had to say, repeatedly asking "Where is it?" It was only when their conversation had reached

a standstill that Respondent decided to leave to consult with her delegate. By the sergeant's own admission, he did say to Respondent, "Oh, okay. If you need your delegate, okay, fine." The credible evidence has failed to prove that Respondent was discourteous to Sergeant Lewis, and I find her not guilty of Specification 3.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

The Department asked that Respondent forfeit thirty (30) vacation days as an appropriate penalty for her three discourtesy charges. However, Respondent has been found guilty of only two of the three specifications charging her with discourtesy, so something less than thirty (30) days is warranted here. This tribunal agrees with the Department Advocate's suggestion during his closing remarks that Respondent's conduct was improper and should be treated as such. There needs to be some level of accountability for the disrespectful manner in which Respondent interacted with her sergeants. However, as the Advocate also pointed out, these weren't the "discourtesies of the century." There was no evidence that Respondent refused to comply with an order, or that she used profanity toward her supervisors. Since the last incident, Respondent has transferred to a different precinct. This tribunal is encouraged that during the two days of trial, Respondent was cordial and treated the court with respect. The hope is that this case

will serve as a learning experience, and that Respondent will adjust her behavior accordingly.


A somewhat similar set of circumstances was presented in *Disciplinary Case No. 2012-8102* (May 22, 2014). There, a seven-year officer with no disciplinary history negotiated a penalty of fifteen (15) vacation days for speaking back to her sergeant and subsequently walking away from said sergeant while being issued instructions. The officer there initially spoke discourteously to a civilian complainant by raising her voice, pointing her finger, and speaking in an accusatory fashion. Although the portion of that case involving discourtesy to a civilian isn't present here, the part of that case dealing with how the officer interacted with the sergeant is comparable to how Respondent here was discourteous toward Sergeants Jones and Latimer. Using that case as a guide, and taking into account the totality of circumstances including Respondent's lack of disciplinary history, I recommend that Respondent forfeit twelve (12) vacation days as an appropriate penalty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

JUN 23 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TANISHA GUNN-WELSH
TAX REGISTRY NO. 938629
DISCIPLINARY CASE NO. 2015-14337

Respondent was appointed to the Department on July 11, 2005. Her last three annual evaluations were 3.5 overall ratings of "Highly Competent/Competent" for 2012, 2014 and 2015. She has one medal for Excellent Police Duty.

She has no prior formal disciplinary history.



For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials